

MONTANA LEGISLATIVE HISTORY

Chapter 398 19 79

Bill H _____ S 225

Original bill & history ✓ c

H. Committee on Judiciary

Hearing Date(s) h 3/2 _____ c

✓ 3/15 _____ c

_____ c

_____ c

Date Out _____ c

S. Committee on Judiciary

Hearing Date(s) h 1/31 _____ c

✓ 2/7 _____ c

_____ c

_____ c

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

CHAPTER NO. 398

SENATE BILL NO. 225

INTRODUCED BY RYAN

IN THE SENATE

January 24, 1979	Introduced and referred to Committee on Judiciary.
February 10, 1979	Committee recommend bill do pass as amended. Report adopted.
February 12, 1979	Printed and placed on members' desks.
February 13, 1979	Second reading, pass consideration.
February 14, 1979	Second reading, do pass.
February 15, 1979	Considered correctly engrossed.
February 16, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 17, 1979	Introduced and referred to Committee on Judiciary.
March 16, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 17, 1979	Second reading, concurred in.
March 21, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 22, 1979	Returned from second house. Concurred in as amended.
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March 23, 1979

Second reading, amendments
adopted.

March 24, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *225*
2 INTRODUCED BY *Ryan*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO MODIFY THE GROUNDS
5 FOR RECALL OF A PUBLIC OFFICER; AMENDING SECTION 2-16-603,
6 MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
9 Section 1. Section 2-16-603, MCA, is amended to read:
10 "2-16-603. Officers subject to recall -- grounds for
11 recall. (1) Every person holding a public office of the
12 state or any of its political subdivisions, either by
13 election or appointment, is subject to recall from such
14 office.
15 (2) A public officer holding an elective office may be
16 recalled by the qualified electors entitled to vote for his
17 successor. A public officer holding an appointive office may
18 be recalled by the qualified electors entitled to vote for
19 the successor or successors of the elective officer or
20 officers who have the authority to appoint a person to that
21 position.
22 (3) Physical or mental lack of fitness, incompetence,
23 ~~neglect-of-duty-or-conviction-of-misfeasance-or-misfeasance~~
24 ~~in-office~~ violation of his oath of office, official
25 misconduct, or conviction of a felony offense enumerated in

1 ~~chapters-1-through-6-of Title 45-23-5-106-or--23-5-127~~ is
2 the only basis for recall. No person may be recalled for
3 performing a mandatory duty of the office he holds or for
4 not performing any act that, if performed, would subject him
5 to prosecution for official misconduct."

-End-

Forty-Sixth LEGISLATIVE SESSION

COMMITTEE ON

Judiciary-Senate

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
SB-296	1/30/79	2/5/79	2/8/79	2/7/79					
SB-301	1/31/79	2/13/79	2/9/79			2/18/79			
SB-322	1/31/79	2/7/79	2/8/79		2/8/79				
SB-214	1/31/79	2/6/79	2/19/79			2/18/79			
SJR-12	1/31/79	2/8/79	+ is with letter to House				Senate		
HB-184	1/31/79	2/23/79	2/23/79				2/23/79		
HB-174	1/31/79	2/23/79	2/23/79					2/23/79	
HB-203	1/31/79	2/28/79	3/1/79						3/1/79
HB-223	1/31/79	2/28/79	3/6/79					3/1/79	
HB-225	1/31/79	2/28/79	^{Filed} 2/28/79						
HB-226	1/31/79	2/28/79	2/28/79				2/28/79		
HB-229	1/31/79	3/1/79	3/2/79					3/1/79	
HB-242	1/31/79	3/1/79	3/2/79					3/1/79	
HB-270	1/31/79	3/2/79	3/3/79				3/3/79		
HB-308	1/31/79	3/2/79	3/2/79				3/2/79		
HB-282	2/1/79	3/1/79	3/6/79						3/6/79

Use a separate sheet for Senate, House Bills, and Resolutions.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 31, 1979

Senator Lensink called the twenty-first meeting of the Senate Judiciary Committee to order in room 331 at 9:32 a.m. on the above date.

ROLL CALL:

All members present except for Senator Towe, who was excused.

CONSIDERATION OF SENATE BILL 225:

Senator Ryan, sponsor of this bill, which is an act to modify the grounds for recall of a public officer, gave an explanation of this bill. He went over the change in lines 23 through 25. There were no further proponents and no opponents.

Margaret Davis, representing the League of Women Voters stated that the League does not really support the bill, but they question why the change is made. They don't feel the language "official misconduct" is applicable. She stated that if a person is found guilty, he automatically forfeits his office, if he is found innocent, he is still in office. She felt this unnecessarily muddies the water.

There were no further proponents and no opponents.

Senator Brown questioned if it was the feeling that the terms "misfeasance and malfeasance" were not defined in the legal jargon. Senator Ryan stated that with such broad terms, conviction is questionable.

There were no further questions from the committee, and the hearing on the bill was closed.

CONSIDERATION OF HOUSE BILL 136:

Representative Daily gave an explanation of this bill, which is an act to provide a procedure for investigation of suspicious deaths in specific circumstances; requiring that a report be made to the state medical examiner; and clarifying the authority of the state medical examiner to order an autopsy or other examination. He introduced Bill Romine, who represents the Sheriff and Peace Officers' Association, and who gave a statement in support of this bill.

He also introduced Roland Pratt, who is the executive director of the Montana Funeral Directors Association, who said a few words in support of this legislation.

There were no further proponents and no opponents.

Date 1/31/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)			
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 7, 1979

The twenty-eighth meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in Room 331 of the Capitol Building on the above date at 9:30 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 322:

This bill was sponsored by Senator Healy and is an act to protect employers from claims for contribution or indemnity asserted by a third person. Senator Healy offered a prepared statement. (See Exhibit A.)

Mr. William Kirkpatrick, representing the Champion International Corporation gave a statement in support of this bill. (See Exhibit B.) He said the purpose is not to change the Workmen's Compensation law, but to clarify it.

Norman Grosfield, representing the Division of Workers' Compensation gave a statement in support of the bill.

George Wood, Executive Secretary of the Montana Self-Insurance Association, requested a do pass on this bill.

There were no further proponents and no opponents.

There were no questions and the hearing on the bill was closed.

CONSIDERATION OF SENATE BILL 271:

Senator Hazelbaker gave an explanation of this bill, which is an act to regulate the collection, storage and dissemination of criminal justice information to provide for privacy of the information in certain circumstances etc. He stated that this bill was the result of a four-year study set up by the Board of Crime Control.

Sheri Sprigg, from the attorney general's office offered a number of amendments. (See Exhibit C.) She stated that there have been a number of problems that they have encountered in trying to fulfill the law presently on the books. She stated that Congress, in 1975, passed a law that required any states that receive federal money must come up with a plan for assuring the privacy and security of the system. She said that Montana's Constitution contains both the right-to-know and the right-to-privacy. She went through the major sections of the bill and discussed the amendments.

Larry Petersen, staff member from the Board of Crime Control gave a statement in support of this bill.

unanimously. Senator Brown moved that the bill do pass as amended, with the understanding that they discuss the matter further with Judge Haswell and maybe we can pull it off the board. There were six "no" votes and four "yes" votes. See Roll Call Vote.

Senator Turnage made a substitute motion that the bill be tabled. The motion carried unanimously.

Senator Towe moved that we request the Legislative Council to draft a resolution directed to the supreme court that would cover this matter. The motion carried with Senator Brown voting no.

DISPOSITION OF SENATE BILL 232:

Senator Towe moved that on page 2, line 10 the bill be amended by striking the words "as follows" and all the remaining new language on that page and insert "as provided by statute". The motion carried unanimously.

Senator Towe moved to strike all the new material on lines 20 and 21, on page 1. The motion carried by a vote of 6 yeses, 2 nos and 2 abstained. See Roll Call Vote.

Senator Towe moved to amend the bill on page 1, lines 6 through 11 by striking all material following "commission". The motion carried unanimously.

Senator Towe moved that the bill do pass as amended. The motion carried with 8 voting yes, 1 voting no and 1 abstaining. See Roll Call Vote.

DISPOSITION OF SENATE BILL 217:

Senator Turnage moved that Senate Bill 217 do pass. The motion failed. See Roll Call Vote.

Senator Van Valkenburg moved that this bill do not pass. Without objection, we will reverse the vote. There were no objections. See Roll Call Vote.

DISPOSITION OF SENATE BILL 225:

Senator Turnage moved to amend the bill on page 1, line 24 following "office" insert "conviction of". The motion carried unanimously.

Senator Turnage moved that the bill do pass as amended. The motion carried unanimously.

DISPOSITION OF SENATE BILL 261:

Senator Turnage moved that the bill be amended on page 1, line 17 by striking "maintenance" and also on line 7 in the title by striking "maintenance". The motion carried unanimously.

Date 2/2/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 217	provide exclusive remedy- a violation of rights pro- tected by the 4th amendment	2/17	B. Brown	Friday 3/2	as amended be concurred	3/16
SB 225	modify grounds for recall of public officer	2/17	Ryan	Friday 3/2	as amended be concurred	3/15
SB 232	documents of judicial standards be available for public inspection, etc.	2/17	S. Brown	Monday 3/5	killed (hold)	3/5
SB 261	provide sovereign immunity public highways, etc.	2/17	Turnage	Friday 3/2	not concurred	3/9
SB 250	statement of intent - for certain subdivision laws, etc.	2/19	Turnage	Weds 3/7	as amended be concurred	3/17
SB 278	use of interpreters for the deaf in adm or judicial	2/19	Thomas	Tues. 3/6	as amended be concurred	3/6

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 2, 1979

The meeting was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building on Friday, March 2. All members were present with the exception of Representatives Iverson and Seifert.

Scheduled for hearing were Senate Bills 153, 215, 217, 225, 261, 291, 296, 380, and 488.

SENATE BILL NO. 261: Senator Turnage. This bill would provide sovereign immunity from liability resulting from the design, construction or maintenance of public highways. This would not be covered gross negligence has been established. We are caught in a fiscal bind and if we can keep Montana government fiscally solvent then I believe this is desirable. We have the means of reducing the cost of government. Even if Montana did win it might be very costly.

MIKE YOUNG: The primary impetus of this bill is because of the insurance dating back to 1973. He discussed the rise in cost. In 1977, 1850 thousand and we cancelled, and we have been self-insured ever since. The insurance cost will be virtually the same for 1979. We have had 125 claims and 25 of those have matured into lawsuits. With half of the time with icy roads in the winter time it doesn't take much of a crystal ball to see that when most of the claims are of one type of risk you should take some kind of action. He gave statistics and examples of highway death claims and guardrail claims. He gave an example of a wrongful death action by a woman near Livingston.

MIKE STEPHENS: Montana Association of Cities and Towns. We support the bill.

GLEN DRAKE: Insurance Companies. We support this bill. There has to be some risk involved and this bill address that risk.

JIM BECK: We support this bill. We would like to point out to the committee that in addition to the cost there are also attendant costs of proeparation of the lawsuit. I think it will provide a mojour protection for the taxpaying public.

MIKE MELOY: He briefly explained his position on the bill. The state has paid approximately 13 or 14 claims, \$2600.31 paid out. He gave examples of types of claims that will be eliminated. He also commented on 30 claims that dealt with road oil, chuck holes, gravel, protruding obstatcles and that type of claim.

REPRESENTATIVE EUDAILY: Was this not included in Senate Bill 65, the elections bill?

MR. McGRATH: No.

The hearing closed on Senate Bill 291.

SENATE BILL NO. 296: Senator Van Valkenburg. This bill just adds tribal judges to the list of people who can solemnize marriages.

The hearing closed on Senate Bill 296.

SENATE BILL NO. 488: Senator Jergeson. It gives an additional tool to the Administrative Code Committee. What it does is set up a sunset process. On page 2, line 25, it does list the Department of Fish and Game. There is a fiscal note.

REPRESENTATIVE SCULLY: I will read a letter from George Bandy, the Acting Commissioner of Higher Education. Letter attached, exhibit #4, which states that the Board of Regents is excluded from the Administrative Procedure Act.

SENATOR JERGESON: Would you like to strike the reference to the University system. Discussion.

The hearing closed on Senate Bill 488.

SENATE BILL NO. 215: Senator Ryan. This bill would punish physical violence perpetrated upon a child by an adult. The purpose of the bill is to increase the penalty. She discussed subsection 3 on page 2.

There was no other discussion and the hearing closed on Senate Bill 215.

SENATE BILL NO. 225: Senator Ryan. This is an attempt to clarify the recall. On page 1, subsection 3, I have had it interpreted to me that because this reads misconduct this would exclude judges and county attorneys, that they would have to indict themselves. He went on to discuss line 24.

Representative Rosenthal asked what kind of physical fitness. Senator Ryan said that one of the judges in Cascade County was incapacitated for a long time and this would clarify.

Representative Holmes questioned line 22, to change the wording. With no other discussion the hearing closed on Senate Bill 225.

JUDICIARY COMMITTEE
EXECUTIVE SESSION
March 15, 1979

The meeting was called to order by Vice-chairman Teague at 9:00 a.m. in room 436 of the Capitol Building on Thursday, March 15. All members were present except Representatives Seifert and Scully.

The first order of business was a report from the sub-committee on the sentencing bills, Representative Pavlovich, Chairman. He started the report by saying that HB 396 had been killed in Senate Judiciary and that the sub-committee recommended that 228 be killed because this was covered by 426. However, 426 needs an amendment to make it work. HB 618 has passed the Senate on March 14th. He went through the other bills and gave the current status of each.

SENATE BILL NO. 228:

Representative Pavlovich moved "be not concurred in". Representative Keedy questioned the sub-committee reasoning concerning Senate Bills 228 and 426. Larry Weinberg, the staff attorney, explained this. 228 dealt with making persisting felony offenders ineligible for parole or to participate in the prisoner furlough program. 426 would have made mandatory language concerning persistent felony offenders that was made discretionary by the Senate. On page 2, subsection 2, its existing language covers the material in subsection 3 now by changing "shall" to "may". The change has all of the power under subsection that was granted under subsection 3. Number 228 as originally written would have made a difference.

Representative Keedy commented that if 228 does not pass then 426 is stretching the imagination. 228, in effect, makes no change in the law as it is written right now. It needs to change the "or" to "and".

Representative Keedy moved a substitute "do pass". Representative Keedy moved to amend page 2, line 13 by striking "may" and inserting "shall". The motion failed with 8 yes and 8 no votes. Representatives Holmes spoke against the amendment and Representatives Conroy and Iverson spoke for the amendment.

Representative Keyser moved to revert to the original motion "do not pass". The motion carried with the vote unanimous.

SENATE BILL NO, 364:

Representative Conroy moved "be concurred in". Representative Keedy discussed the bill and the way it would distribute justice based upon wealth. The poor guy would go to jail and the rich guy would stay out.

Representative Daily moved a substitute "not concurred in". The motion carried with Representatives Eudaily and Pavlovich voting "no".

Conroy, Holmes, Scully, Lory, Seifert and Uhde. Representative Eudaily will carry it on the floor.

SENATE BILL NO. 112: Joanne Woodgerd explained this bill and commented that the subcommittee recommended holding it, until action is taken on Senate Bill 365. There are some amendments that were deleted.

SENATE BILL NO. 132: Mr. Eudaily presented the sub-committee proposed amendments. This bill amends current law and tries to address the problem of getting a recount of 1/4 of 1%. Mr. Eudaily went on to explain the provision for the recount. The unsuccessful candidate would have to post a bond with the clerk and recorder in the amount set by the clerk and recorder sufficient to cover all the costs of the recount, including loss of time of regular employees caused by absence from their regular duties. The county canvassers would then meet and recount the ballots as specified in the petition.

Representative Eudaily moved the adoption of the amendments. The motion carried with the vote unanimous. Representative Roth moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Eudaily will carry on the floor.

SENATE BILL NO. 225: Representative Keyser presented amendments and moved the adoption. The motion carried with the vote unanimous. Representative Keyser moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Keyser will carry on the floor.

SENATE BILL NO. 256: Joanne Woodgerd explained some problems that might come up with House Bill 747 in the Senate. This bill does most of what that bill would do.

Representative Keyser moved to amend as presented to the committee. He explained the amendments. The motion carried with the vote unanimous. (attached

Representative Kemmis moved to amend, by striking Page 13, lines 18 and 19, to strike and insert new language, (copy attached) and to amend page 14, lines 7 and 8. (copy attached) The motion carried with the vote unanimous.

Representative Rosenthal moved "be concurred in as amended". The motion carried with the vote unanimous.

SENATE BILL NO. 225

INTRODUCED BY RYAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO MODIFY THE GROUNDS
FOR RECALL OF A PUBLIC OFFICER; AMENDING SECTION 2-16-603,
MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-16-603, MCA, is amended to read:

"2-16-603. Officers subject to recall -- grounds for
recall. (1) Every person holding a public office of the
state or any of its political subdivisions, either by
election or appointment, is subject to recall from such
office.

(2) A public officer holding an elective office may be
recalled by the qualified electors entitled to vote for his
successor. A public officer holding an appointive office may
be recalled by the qualified electors entitled to vote for
the successor or successors of the elective officer or
officers who have the authority to appoint a person to that
position.

(3) Physical or mental lack of fitness, incompetence,
~~neglect-of-duty-or-conviction-of-misfeasance-or-misfeasance~~
~~in-office,~~ violation of his oath of office, ~~CONVICTION--OF~~
official misconducts or conviction of a felony offense

enumerated in chapters 1 through 8 of Title 45, 23-5-106, or
23-5-127 is the only basis for recall. No person may be
recalled for performing a mandatory duty of the office he
holds or for not performing any act that, if performed,
would subject him to prosecution for official misconduct."

-End-